

IN THE MATTER OF:

Docket Number CERC/RCRA-03-2012-0224DC

SETTLEMENT AGREEMENT AND COVENANT NOT TO SUE

PHILADELPHIA ENERGY
SOLUTIONS LLC AND
PHILADELPHIA ENERGY
SOLUTIONS REFINING AND
MARKETING LLC

Page 1 of 49

has represented that PES R&M LLC will acquire and operate the Property for purposes of conducting refining, energy and chemical operations; and

Whereas subsequent to PES R&M LLC's purchase of the Property, Sunoco will continue as necessary to complete its corrective action obligations under the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. §§ 6901 et seq.; and

Whereas the United States, the Commonwealth of Pennsylvania and the City of Philadelphia have stated that it is in the best interest of the public to provide for the continued operation of the Property as a crude oil refinery; and

Whereas the Department of the Interior ("DOI") and the National Oceanic and Atmospheric Administration ("NOAA") (collectively, the "United States Natural Resource Trustees") have not performed an assessment at or regarding said Property and have no knowledge of any injury to natural resources as of the Effective Date of this Settlement Agreement and Covenant Not to Sue ("Settlement Agreement"); and

Whereas Settling Respondents have represented that they are new entities, separate and distinct from Sunoco, Inc., Sunoco, or any other affiliate of Sunoco, Inc.; and

Whereas it is not the intent of this Settlement Agreement to allow Sunoco, its predecessors-in-interest, successors-in-interest, or affiliates to get the benefit of the covenant not to sue herein with respect to any Existing Contamination at the Site; and, therefore,

The United States, on behalf of the Environmental Protection Agency (“EPA”) and DOI, NOAA, PES LLC and PES R&M LLC (collectively the “Parties”) and Sunoco hereby agree to be bound by this Settlement Agreement:

I. INTRODUCTION

1. This Settlement Agreement is made and entered into by and between the Parties and Sunoco.

2. The United States enters this Settlement Agreement pursuant to RCRA, 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9601, et seq., and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. The Property, as more fully described in Exhibits 1 and 2, constitutes substantial portions of an approximately 1,400-acre complex located within the City of Philadelphia containing primarily two formerly separate refining operations known as “Point Breeze” and “Girard Point” and related properties, including the West Yard, North Yard, and Schuylkill River Tank Farm (hereinafter collectively referred to as “Philadelphia Refinery”).

4. PES R&M LLC is a limited liability company established under the laws of Delaware with its headquarters at 3144 W. Passyunk Ave., Philadelphia, Pennsylvania, 19145. Philadelphia Energy Solutions LLC (“PES LLC”) indirectly owns all of PES R&M LLC. PES R&M LLC has proposed to purchase the Property and conduct crude oil refining and related operations at the Property. The membership interests of PES LLC are held by Carlyle PES, L.L.C., a Delaware limited liability corporation and Sunoco, Inc., a Pennsylvania corporation.

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

5. The Parties agree to undertake all actions required of each of them by the terms and conditions of this Settlement Agreement. The purpose of this Settlement Agreement as it pertains to the Parties, is to settle and resolve, subject only to reservations and limitations contained in Sections VIII (Certification), IX (Covenant Not to Sue), X (Reservation of Rights), and XI (Settling Respondents' Covenant Not to Sue), the potential liability of the Settling Respondents for the Existing Contamination at the Property which would otherwise result from PES R&M LLC becoming the owner and/or operator of the Property.

6. Sunoco agrees to undertake all actions required by Section XVII (Obligations by Sunoco) of this Settlement Agreement. The purpose of this Settlement Agreement as it pertains to Sunoco is to provide assurances that Sunoco will implement its corrective action obligations under RCRA at the Property. Furthermore, Sunoco agrees that the actions to be undertaken pursuant to the terms and conditions of this Settlement Agreement are in its benefit.

7. The Parties agree that the Settling Respondents' entry into this Settlement Agreement, and the actions undertaken by the Settling Respondents in accordance with the Settlement Agreement, do not constitute an admission of any liability by the Settling Respondents.

8. The resolution of this potential liability, in exchange for provision by the Settling Respondents to United States of a substantial benefit, is in the public interest.

II. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA and RCRA or in regulations promulgated under

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

CERCLA and RCRA shall have the meaning assigned to them in CERCLA and RCRA or in such regulations, including any amendments thereto.

a. "Corrective Action" shall mean the corrective action obligations at the Site under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.

b. "Day" shall mean a calendar day unless expressly stated to be a working day. Any provision of this Agreement that requires a response or other action that falls on a weekend or holiday day shall be extended to the next working day.

c. "DOI" shall mean the Department of the Interior and any successor departments or agencies of the United States.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Existing Contamination" shall mean:

- i. any Waste Material that is present or existing on or under the Property as of the Effective Date of this Settlement Agreement;
- ii. any Waste Material that migrated from the Property prior to the Effective Date of this Settlement Agreement; and
- iii. any Waste Material that is present or existing on or under the Property as of the Effective Date that migrates from the Property after the Effective Date of this Settlement Agreement.

f. “Institutional Controls” shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by restricting land and/or resource use. Examples of institutional controls include, but are not limited to, easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

g. “NOAA” shall mean the National Oceanic and Atmospheric Administration and any successor departments or agencies of the United States.

h. “PADEP” shall mean the Pennsylvania Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

i. “Release” shall mean any release, spill, emission, leaking, dumping, injection, pouring, pumping, placing, discarding, abandoning, deposit, disposal, discharge, migrating, or dispersal into, on, under, or through the environment (including ambient air, surface water, groundwater, land surface or subsurface strata).

j. “Response Action” shall mean all actions taken by the United States pursuant to RCRA and/or CERCLA in response to the release or threatened release of Waste Material at or in connection with the Property.

k. “Settlement Agreement” shall mean this Settlement Agreement and Covenant Not to Sue and all exhibits attached to this Agreement (listed in Section XXIII). In the event of conflict between this Settlement Agreement and any exhibit, this Settlement Agreement shall control.

l. "Site" shall mean the approximately 1,400-acre parcel located in Philadelphia, Pennsylvania and depicted generally on the map attached as Exhibit-3 to this Settlement Agreement including those portions which are subject to RCRA Corrective Action Permits, EPA ID Nos. PAD002289700 and PAD049791098, under RCRA Section 3004(u), 42 U.S.C. Section 6924(u). The Site shall include the Property and all areas to which hazardous substances and/or pollutants or contaminants have been deposited, stored, disposed of or otherwise come to be located.

m. "Solvent" shall mean that, as of the date of any transfer or assignment, after giving effect to the consummation of such transactions associated with the transfer or assignment, (a) the present fair saleable value of the assets of the transferee or assignee, at a fair valuation, will exceed the debts and other obligations, direct, subordinated, unmatured, unliquidated, contingent or otherwise of the transferee or assignee; (b) the present fair saleable value of the property of the transferee or assignee, at a fair valuation, will be greater than the amount that will be required to pay the probable liability of the transferee or assignee on its debts and other obligations, direct, subordinated, unmatured, unliquidated, contingent or otherwise, as they become absolute and matured; and (c) the transferee or assignee will be able to pay its debts and other obligations, direct, subordinated, unmatured, unliquidated, contingent or otherwise, as they become absolute and mature. As used herein, each of the terms "fair value" and "present fair saleable value" means the amount that could be obtained for assets within a reasonable time through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase. The statements above mean that

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

the transferee or assignee on a consolidated basis will be able to generate enough cash from operations, asset dispositions, refinancing, or a combination thereof, to meet its obligations as they become due based on the business in which it is engaged or intends to engage. In computing the amount of any contingent, subordinated, unmatured and unliquidated liabilities as of the date hereof, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing as of the date hereof, represents the amount that can reasonably be expected to become an actual or matured liability. For the purpose of the above analysis, the value of the assets of the transferee or assignee shall be computed by considering the transferee or assignee as a going concern entity.

n. "State" shall mean the Commonwealth of Pennsylvania, its departments, agencies, and instrumentalities, including but not limited to PADEP.

o. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

p. "Waste Material" shall mean shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous waste" under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5) and 25 PA Code. § 261a.3.

q. "Work" shall include all activities that Settling Respondents are required to perform regarding the Property pursuant to this Settlement Agreement.

III. STATEMENT OF FACTS

10. The Site is approximately 1,400 acres located at 3144 W. Passyunk Avenue, Philadelphia, Pennsylvania and is depicted on Exhibit 3.

11. Since the 1800s, the Site has been used as a refinery to distribute, store and process petroleum. Sunoco currently operates the Site.

12. Sunoco's refinery operations at the Site contributed to soil and groundwater contamination. The main contaminants at the Property are hydrocarbons and heavy metals, including lead and arsenic.

13. The Site was formerly operated as two separate facilities, the Point Breeze Facility and the Girard Point Facility.

14. On December 9, 1988, EPA issued a RCRA Corrective Action Permit, EPA ID No. PAD002289700 (1988 CA Permit), under RCRA Section 3004(u), 42 U.S.C. Section 6924(u), to Atlantic Refining and Marketing Corp ("ARMC") for the Point Breeze Facility. The 1988 CA Permit, which on its terms expired on December 8, 1998, has been extended by EPA until final remedy selection. The 1988 CA Permit requires ARMC to, among other things, investigate solid waste management units ("SWMUs") and evaluate remedy options. In September 1989, as a part of a transaction with Atlantic Richfield Corporation, ARMC became an affiliate of Sunoco, and Sunoco became the operator of Point Breeze including the area of the Property subject to the 1988 CA Permit. Sunoco is currently the entity obligated to comply with the 1988 CA Permit.

15. On October 27, 1989, EPA issued a RCRA Corrective Action Permit, EPA ID No. PAD049791098 (“1989 CA Permit”), under RCRA Section 3004(u), 42 U.S.C. Section 6924(u), to Chevron USA, Inc. (“Chevron”) for the Girard Point Facility. The 1989 CA Permit, which on its terms expired on October 26, 1999, has been extended by EPA until final remedy selection. The 1989 CA Permit requires Chevron to, among other things, investigate solid waste management units and evaluate remedy options. Sometime in August 1994, as a part of a transaction with Chevron, Sunoco became the owner and operator of Girard Point, including the area of the Property subject to the 1989 CA Permit. Sunoco is currently the entity obligated to comply with the 1989 CA Permit.

16. On December 17, 2003, PADEP and Sunoco entered into a Consent Order and Agreement (CO&A) pursuant to Sections 5 and 316 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.316; and Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §§ 510-17. The CO&A requires Sunoco to assess the potential degradation of groundwater at the Site and, if applicable, propose remedial options to meet a remedial standards under the Land Recycling and Environmental Remediation Standards Act, 35 P.S. §§ 6026.101 et seq. (“Act 2”).

17. Sunoco voluntarily entered into the Act 2 Program on October 12, 2006. PADEP and EPA are addressing the Site under the One Cleanup Program Memorandum of Agreement (“MOA”) signed by PADEP and EPA in 2004.

18. Settling Respondents have represented that they are new entities, separate and distinct from Sunoco, Sunoco, Inc., or any other affiliate of Sunoco, Inc., and that Sunoco, Inc. maintains a non-operating, minority interest in PES LLC.

19. Settling Respondents have stated their interest in negotiating an agreement with the United States pursuant to which they would obtain a covenant not to sue and contribution protection, and subsequently PES R&M LLC would acquire the Property.

20. Settling Respondents have also stated that upon purchasing the Property, PES R&M LLC intends to conduct, as the sole owner and operator, crude oil refining, chemical, and energy businesses at the Property.

21. Settling Respondents represent, and for the purposes of this Settlement Agreement EPA relies on such representation, that they have not caused or contributed to Existing Contamination and that Settling Respondents' involvement with the Property and the Site has been limited to the following: before acquiring the Philadelphia Refinery, Settling Respondents conducted due diligence, including, among other things, the review of certain records pertaining to the presence and extent of hazardous substances released at the Site, including access to an electronic data room that contains many of the various submissions, reports and analyses submitted by Sunoco to PADEP and EPA, and a visit to the Site. Settling Respondents further represent that after the Effective Date of this Settlement Agreement, they are Solvent as defined herein.

IV. PAYMENT

22. In consideration of and in exchange for the Covenant Not to Sue in Section IX herein, Settling Respondents agree to pay to EPA the sum of \$100,000, the receipt and sufficiency of which is hereby acknowledged by the Parties. The Settling Respondents shall make all payments required by this Settlement Agreement within thirty (30) days after the Effective Date of this Settlement Agreement in the form of a certified check or checks made payable to "Treasurer, United States of America." The check(s) shall reference EPA Region III, the Site, the Docket Number of this Settlement Agreement (CERC/RCRA-03-2012-0224DC), the name and address of the party making payment and (d) be mailed to:

U.S. EPA, Region III
P. O. Box 360515
Pittsburgh, PA 15251-6515.

Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XVI (Notices and Submissions) of this Settlement Agreement, and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

23. Amounts due and owing pursuant to the terms of this Settlement Agreement but not paid in accordance with the terms of this Settlement Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

24. Commencing upon the date that it acquires title to the Property and throughout the time of PES R&M LLC's ownership and/or operation of the Property, Settling Respondents agree to provide to Sunoco, Sunoco, Inc. and their affiliates or assigns, EPA, its authorized officers, employees, representatives, and all other persons performing Response Actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of Response Actions at the Site, to the extent access to such other property is controlled by the Settling Respondents, for the purposes of performing and overseeing Response Actions at the Site under federal and state law. EPA agrees to provide reasonable notice to the Settling Respondents of the timing of Response Actions to be undertaken at the Property. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulation, including any amendments thereto.

25. a. Within ninety (90) days after EPA notifies Settling Respondents that EPA has selected a Response Action that requires an environmental covenant, Settling Respondents shall submit to EPA for review and approval a draft environmental covenant to be entered pursuant to the Pennsylvania Uniform Environmental Covenants Act, 27 Pa. C.S. Sections 6501-6517, ("UECA").

b. The Settling Respondents shall record on the title to the Property the EPA approved environmental covenant within thirty (30) days of EPA's approval. The Settling

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

Respondents shall provide EPA with a certified copy of the environmental covenant within ten (10) days of receiving a certified copy of the recorded covenant from the Philadelphia Department of Records.

26. For so long as PES R&M LLC is owner and/or operator of the Property, Settling Respondents shall require that assignees, successors in interest, and any lessees, sublessees and other parties who may hereafter be granted rights to use or who otherwise will hold an interest (other than a mortgage or other security interest) in the Property to contractually agree to provide access and cooperation to EPA, its authorized officers, employees, representatives, and all other persons performing Response Actions under EPA and PADEP oversight and to implement and comply with any institutional controls on the Property in connection with a Response Action, and not contest EPA's authority to enforce any institutional controls on the Property.

27. Settling Respondents shall provide a copy of this Settlement Agreement to any current lessee, sublessee, and all other party(ies) with rights to use the Property as of the Effective Date.

VI. APPROPRIATE CARE/COOPERATION

28. Settling Respondents shall exercise appropriate care with respect to the Existing Contamination and shall comply with all applicable local, state, and federal laws and regulations applicable thereto.

29. Settling Respondents shall comply with all applicable local, state, and federal laws and regulations with respect to Waste Material, not within the definition of Existing Contamination, found at the Property.

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

30. Settling Respondents shall provide full cooperation, assistance and access to persons that are authorized by the United States to conduct Response Actions and/or natural resource restoration at the Property (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial Response Actions or natural resource restoration at the Property).

31. Settling Respondents shall (i) comply with any and all land use restrictions established or relied on in connection with the Response Action at the Property; (ii) not impede the effectiveness or integrity of any institutional control employed at the Property in connection with a Response Action; and (iii) comply with all requests for information or administrative subpoena(e) issued by EPA.

32. Settling Respondents recognize that the implementation of Response Actions at the Site may interfere with their use of the Property, and may require closure of their operations or a part thereof. Settling Respondents agree to cooperate fully with EPA in the implementation of Response Actions at the Site and further agrees not to interfere with such Response Actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with Settling Respondents' operations by such entry and response.

33. In the event the Settling Respondents become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in

addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, and any other law, immediately notify EPA of such release or threatened release.

VII. INDEMNIFICATION

34. Settling Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Respondents, their officers, managers, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Settling Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Settling Respondents, Settling Respondents' officers, managers, employees, agents, contractors, subcontractors and any persons acting on Settling Respondents' behalf or under Settling Respondents' control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Settling Respondents nor any such contractor shall be considered an agent of the United States.

35. The United States shall give Settling Respondents reasonable advance written notice of any claim for which the United States plans to seek indemnification pursuant to this

Section and shall consult with Settling Respondents no later than ten (10) business days prior to settling such claim.

36. Settling Respondents waive all claims against the United States for damages or reimbursement or for setoff of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Settling Respondents and any person for performance of Work on or relating to the Property, including, but not limited to, claims on account of construction delays. In addition, Settling Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Respondents and any person for performance of Work on or relating to the Property, including, but not limited to, claims on account of construction delays.

VIII. CERTIFICATION

37. By entering into this Agreement, the Settling Respondents certify that to the best of their knowledge and belief they have fully and accurately disclosed to EPA all information known to Settling Respondents and all information in the possession or control of their officers, managers, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of Waste Material at or from the Site and to its qualification for this Settlement Agreement. The Settling Respondents also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of Waste Material at the Site. If the United States determines that information provided by Settling Respondents is not materially accurate and complete, then the United States, acting,

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC --
Settlement Agreement and Covenant Not to Sue

within its sole discretion, may declare this Agreement to be null and void and the United States reserves all rights it may have.

IX. COVENANT NOT TO SUE

38. Subject to the Reservation of Rights in Section X of this Settlement Agreement, upon payment by Settling Respondents of the amount specified in Section IV (Payment) of this Settlement Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondents for any and all civil liability for injunctive relief or reimbursement of response costs, including for damages, harm or to injury to, destruction of, or loss of natural resources, pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) or Sections 3005 or 3008(a) of RCRA, 42 U.S.C. §§ 6925 or 6928(a), with respect to the Existing Contamination. The United States' covenant not to sue under Section IX of this Settlement Agreement shall also apply to Settling Respondents' officers, managers, or employees, but only to the extent that the alleged liability of the officer, manager, or employee is based solely on their status as an officer, manager, or employee of Settling Respondents, and not to the extent that the alleged liability arose independently of the Settling Respondents.

39. The covenant not to sue set forth in this Section IX does not extend to Sunoco, Inc., Sunoco, ARMC, or any other existing affiliate of Sunoco, Inc., its predecessors-in-interest or successors-in-interest, even to the extent that any of the foregoing may own an interest in Settling Respondents or future subsidiaries or affiliates of Settling Respondents to whom this Settlement Agreement may be transferred in whole or in part pursuant to Paragraph 50 herein.

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

40. The covenant not to sue set forth in this Section IX does not extend to Settling Respondents for response costs incurred by the United States for a Response Action undertaken by EPA after the Effective Date of this Settlement Agreement resulting in an increase in the fair market value of the Property that existed before such Response Action was initiated, but only to the extent that such response costs are not otherwise reimbursed in whole or in part.

X. RESERVATION OF RIGHTS

41. The covenant not to sue set forth in Section IX above does not pertain to any matters other than those expressly specified in Section IX (Covenant Not to Sue). The United States reserves and the Settlement Agreement is without prejudice to all rights against Settling Respondents with respect to all other matters, including but not limited to, the following:

- (a) claims based on a failure by Settling Respondents to meet a requirement of this Settlement Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest), and Section VI (Appropriate Care/Cooperation) and except for Section XVII (Obligations by Sunoco);
- (b) any liability resulting from the release or threat of release of Waste Material at or from the Property caused or contributed to by Settling Respondents, their successors, assignees, lessees or sublessees on or after the Effective Date,
- (c) any liability resulting from exacerbation by Settling Respondents, their successors, assignees, lessees or sublessees, of Existing Contamination;
- (d) any liability resulting from the release or threat of release of Waste Material, at the Site after the Effective Date, not within the definition of Existing Contamination;

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

- (e) criminal liability; and
- (f) liability for violations of local, state, or federal law, regulations, permits or orders.

42. With respect to any claim or cause of action asserted by the United States, the Settling Respondents shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and nothing in this Settlement Agreement prohibits the United States from pursuing claims against Settling Respondents for Waste Material released or disposed from Settling Respondents' operations and/or released from or disposed of on the Property during the period of PES R&M LLC's ownership that is commingled with Existing Contamination.

43. Nothing in this Settlement Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Settlement Agreement.

44. Nothing in this Settlement Agreement is intended to limit the right of EPA to undertake future Response Actions at the Site or to seek to compel parties other than the Settling Respondents, such as Sunoco or Sunoco, Inc., to perform or pay for Response Actions at the Site. Nothing in this Settlement Agreement shall in any way restrict or limit the nature or scope of Response Actions which may be taken or be required by EPA in exercising its authority under federal law. Settling Respondents acknowledge that PES R&M LLC is purchasing Property where Response Actions have been and may be required.

XI. SETTLING RESPONDENTS' COVENANT NOT TO SUE

45. In consideration of the Covenant Not To Sue in Section IX of this Settlement Agreement, the Settling Respondents hereby covenant not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Settlement Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA §§ 106(b)(2), 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, 9613, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA §§ 107 or 113, 42 U.S.C. §§ 9607 or 9613, related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

46. The Settling Respondents reserve, and this Settlement Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondents' plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, and 40 C.F.R. § 300.700(d).

XII. PARTIES BOUND/TRANSFER OF COVENANT

47. This Settlement Agreement, except for Section XVII (Obligations by Sunoco), shall apply to and be binding upon the United States, and shall apply to and be binding upon the Settling Respondents, their officers, managers, and employees. The Covenant Not to Sue in Section IX and Contribution Protection in Section XXII shall apply to Settling Respondents' officers, managers, or employees to the extent that the alleged liability of the officer, manager, or employee is based on its status and in its capacity as an officer, manager, or employee of Settling Respondents, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondents. Each signatory of a Party to this Settlement Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind such Party.

48. Sections XVII (Obligations by Sunoco), XVIII (Force Majeure), XIX (Dispute Resolution) and XX (Stipulated Penalties) of this Settlement Agreement shall apply to and be binding upon the United States, and shall apply to and be binding upon Sunoco, its officers, directors, and employees. Sunoco's signatory to this Settlement Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind Sunoco.

49. Notwithstanding any other provisions of this Settlement Agreement, in the event of an assignment or transfer of the Property, in whole or in part, or an assignment or transfer of an interest in the Property or a portion thereof, all of the rights, benefits and obligations conferred upon Settling Respondents under this Settlement Agreement with

respect to the Property or any portion thereof that may be assigned or transferred to any other person or entity as permitted in this Section XII. Any such assignment or transfer shall terminate the obligations conferred upon the assignor or transferor under this Settlement Agreement with respect to the Property or that portion so assigned or transferred except for any liability resulting from the release or threat of release of Waste Material at the Property during Settling Respondents' ownership and/or operation of the Property.

50. Settling Respondents may assign or transfer this Settlement Agreement to a subsidiary or entity under the control of or affiliated with Settling Respondents which is created after the Effective Date provided that such subsidiary or entity executes the Certification of Compliance with Agreement and Covenant Not To Sue in Exhibit 4 and that EPA, DOI and NOAA receive an executed copy fifteen (15) days in advance of the assignment or transfer.

51. Settling Respondents may assign or transfer this Settlement Agreement to entities not subject to paragraph 50, immediately above, provided that the assignee or transferee submit to the EPA for review and approval an executed Certification of Compliance With Agreement and Covenant Not to Sue and Consent as set forth in Exhibit 5. Upon approval by EPA, in consultation with DOI and NOAA, the assignee or transferee shall be bound by the terms of this Agreement including but not limited to Settling Respondents' Covenant Not to Sue in Section XI, of this Agreement. The Covenant Not To Sue in Section IX shall not be effective with respect to any assignees, transferees, lessees or sublessees who fail to obtain such written consent from EPA.

52. Upon approval, the executed version(s) of the certifications set forth in Exhibits 4 and 5 shall be deemed to be incorporated into this Agreement and made an enforceable part hereof.

XIII. DISCLAIMER

53. This Settlement Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIV. DOCUMENT RETENTION

54. The Settling Respondents agree to retain and make available to EPA all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the Effective Date unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondents shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XV. PAYMENT OF COSTS

55. Except to the extent of an assignment or transfer of the Property such that the Settling Respondents are no longer bound by the terms and conditions of Section V of this Settlement Agreement, if the Settling Respondents fail to comply with the terms of this Settlement Agreement, they shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Settlement Agreement or otherwise obtain compliance.

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

XVI. NOTICES AND SUBMISSIONS

56. Whenever under the terms of this Settlement Agreement written notice is required to be given by one Party to another or to Sunoco, it shall be directed to the individuals or office at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Settlement Agreement with respect to the United States, EPA, DOI, NOAA, PES LLC, PES R&M LLC and Sunoco, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ # 90-11-3-10625

and

Sheila Briggs-Steuteville
Senior Assistant Regional Counsel (3RC43)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

As to EPA:

Hon Lee
EPA Project Coordinator (3LC30)
United States Environmental Protection Agency
Region III
1650 Arch Street

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

Philadelphia, PA 19103-2029

As to DOI:

Mark Barash, Esq.
Senior Attorney
United States Department of the Interior, Office of the Regional Solicitor
1 Gateway Center, Suite 612
Newton, MA 02458

As to NOAA:

Craig O'Connor
Special Counsel for Natural Resource Section
NOAA Office of General Counsel
7600 Sand Point Way, NE
Bldg. 1
Seattle, WA 98115-6349

As to PES R&M LLC:

Philip L. Rinaldi
Philadelphia Energy Solutions Refining and Marketing L.L.C.
3144 W. Passyunk Ave.
Philadelphia, PA 19145

As to PES LLC:

Philip L. Rinaldi
Philadelphia Energy Solutions L.L.C.
c/o Philadelphia Energy Solutions Refining and Marketing L.L.C.
3144 W. Passyunk Ave.
Philadelphia, PA 19145

As to Sunoco:

Arnnie Dodderer
Chief Compliance Officer
Assistant General Counsel
Sunoco, Inc.
1735 Market Street
Suite LL – 13th Floor
Philadelphia, PA 19103

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

XVII. OBLIGATIONS BY SUNOCO

57. Sunoco agrees, and shall not appeal or otherwise contest, that it is an operator for purposes of the issuance or implementation of all Response Actions for Existing Contamination at the Site under RCRA Section 3004(u), 42 U.S.C. Section 6924(u), or under the authorized program for the Commonwealth of Pennsylvania, if applicable. Sunoco agrees to seek all permits for Corrective Action under RCRA Section 3004(u), 42 U.S.C. Section 6924(u), or under the authorized program for the Commonwealth of Pennsylvania, if applicable, for the Site.

58. Sunoco agrees to comply with the financial assurance requirements set forth in this Section XVII. In any dispute that relates to this Section XVII, Sunoco agrees to waive its right to challenge or dispute the authority of EPA to enforce the requirements set forth herein.

A. Cost Estimates and Assurances of Financial Responsibility

59. Within one hundred eighty (180) days after the Effective Date of this Settlement Agreement, Sunoco shall submit to EPA for approval detailed written estimates, in current dollars, of the cost of hiring a third party to complete its corrective action obligations under RCRA ("Corrective Action") at the Site ("Cost Estimate"). The Cost Estimate must account for the costs of all foreseeable Corrective Action, including investigations, studies and reports, construction work, monitoring, and other long term operation and maintenance activities that relate to Existing Contamination. All Cost Estimates shall be consistent with the requirements of 40 C.F.R. § 264.142 and § 264.144. References in these regulations to closure and post-closure shall mean the Corrective Action referenced in this Section XVII of this Settlement Agreement.

60. Sunoco shall annually adjust the Cost Estimate for inflation and for changes in the scope of the Corrective Action until its corrective action obligations under RCRA and HSWA are completed. Beginning September 1, 2013, Sunoco shall submit each annual Cost Estimate to EPA for review and approval.

61. If at any time EPA determines that a cost estimate provided pursuant to this Section XVII is inadequate, EPA shall notify Sunoco in writing, stating the basis for its determination. If at any time Sunoco becomes aware of information indicating that any Cost Estimate provided pursuant to this Section is inadequate, Sunoco shall notify EPA in writing of such information within ten (10) days. Within thirty (30) days of EPA's notification, or within thirty (30) days of becoming aware of such information, as the case may be, Sunoco shall submit a revised Cost Estimate to EPA for review.

B. Assurances of Financial Responsibility

62. By March 31 of the year following EPA approval of the initial Cost Estimate, Sunoco shall establish financial assurance for the benefit of the EPA. In the event that EPA approval of Sunoco's initial Cost Estimate is not received within thirty (30) days after close of Sunoco's fiscal year, Sunoco shall establish and maintain the financial assurance in the amount of the Cost Estimate submitted pursuant to Paragraphs 59, 60 and 61, above, by March 31 of the following year. Sunoco shall maintain adequate financial assurance until EPA releases Sunoco from this requirement pursuant to Section XXI (Termination). Sunoco shall update the financial instrument or financial test demonstration to reflect changes to the Cost Estimate by March 31 of each year. Sunoco may use one or more of the financial assurance forms described in

subparagraphs i - v immediately below. Any and all financial assurance documents shall be satisfactory in form and substance as determined by EPA.

- i. An adequately funded insurance policy, including a captive insurance policy, providing coverage for all costs of the Corrective Action, that has been approved by EPA as an appropriate and acceptable means of financial assurance, and which continues to meet any terms and conditions which may be required as a condition of such approval;
- ii. A trust fund established for the benefit of EPA, administered by a trustee;
- iii. A surety bond unconditionally guaranteeing performance of the Corrective Action in accordance with this Settlement Agreement, or guaranteeing payment at the direction of EPA into a standby trust fund that meets the requirements of the trust fund in subparagraph i above;
- iv. An irrevocable letter of credit, payable at the direction of the Director, Land and Chemicals Division, into a standby trust fund that meets the requirements of the trust fund in subparagraph i above;
- v. A corporate guarantee, executed in favor of the EPA by one or more of the following: (1) a direct or indirect parent company, or (2) a company that has a "substantial business relationship" with Sunoco (as defined in 40 C.F.R. § 264.141(h)), to perform the Corrective Action or to establish a trust fund as permitted by subparagraph i above; provided, however, that any company providing such a guarantee shall demonstrate to the satisfaction of the EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the portion of the Cost Estimate that it proposes to guarantee.
- vi. A demonstration by Sunoco that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Cost Estimate, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied.

63. Sunoco shall submit all original executed and/or otherwise finalized instruments to the EPA Region III Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 within thirty (30) days

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

after date of execution or finalization as required to make the documents legally binding.

Sunoco shall also provide copies to the EPA Project Coordinator.

64. If at any time Sunoco provides financial assurance for completion of the Corrective Action by means of a corporate guarantee or financial test, Sunoco shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods, and will promptly provide any additional information requested by EPA from Sunoco or corporate guarantor within seven (7) calendar days of its receipt of such request from EPA or the corporate guarantor.

65. For purposes of the corporate guarantee or the financial test described above, references in 40 C.F.R. § 264.143(f) to “the sum of current closure and post-closure costs and the current plugging and abandonment cost estimates” shall mean the sum of all environmental remediation obligations, including, but not limited to, obligations under CERCLA, RCRA, the Underground Injection Control Program promulgated pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., and the Toxic Substances Control Act, 42 U.S.C. §§ 2601, et seq., and any other federal or state environmental obligation guaranteed by such company or for which such company is otherwise financially obligated in addition to the Cost Estimate.

66. Sunoco may combine more than one mechanism to demonstrate financial assurance for the Corrective Action.

67. Sunoco may satisfy its obligation to provide financial assurance for the Corrective Action herein by providing a third party who assumes full responsibility for said Corrective Action and otherwise satisfies the obligations of the financial assurance requirements of this

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

Settlement Agreement; however, Sunoco shall remain responsible for providing financial assurance in the event such third party fails to do so and any financial assurance from a third party shall be in one of the forms provided in subparagraphs XVII.B.(i.) through (v.) above.

68. If at any time EPA determines that a financial assurance mechanism provided pursuant to this Section XVII is inadequate, EPA shall notify Sunoco in writing. If at any time Sunoco becomes aware of information indicating that any financial assurance mechanism(s) provided pursuant to this Section XVII is inadequate, Sunoco shall notify EPA in writing of such information within ten (10) days of Sunoco's becoming aware of such information. Within ninety (90) days of receipt of notice of EPA's determination, or within ninety (90) days of Sunoco's becoming aware of such information, Sunoco shall establish and maintain adequate financial assurance for the benefit of the EPA which satisfies all requirements set forth in this Section. Any and all financial assurance documents provided pursuant to this Settlement Agreement shall be submitted to EPA for review in draft form at least forty-five (45) days before they are due to be filed and shall be satisfactory in form and substance as determined by EPA.

69. Sunoco's inability or failure to establish or maintain financial assurance for completion of the Corrective Action shall in no way excuse performance of any other requirements of this Settlement Agreement.

70. Modification of Amount and/or Form of Performance Guarantee

i. Reduction of Amount of Financial Assurance. If Sunoco determines that the Cost Estimate has diminished below the amount covered by the existing financial assurance provided under this Settlement Agreement, Sunoco may, at the same time

that Sunoco submits its annual Cost Estimate, submit a written proposal to EPA for approval to reduce the amount of the financial assurance to equal the revised Cost Estimate.

ii. Change of Form of Financial Assurance. If Sunoco desires to change the form or terms of financial assurance, Sunoco may, at the same time that Sunoco submits the annual Cost Estimate, submit a written proposal to EPA for approval to change the form of financial assurance. The written proposal shall specify all proposed instruments or other documents required in order to make the proposed financial assurance legally binding and shall satisfy all requirements set forth in this Section. Within ten (10) days after receiving written approval of the proposed revised or alternative financial assurance, Sunoco shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected financial assurance legally binding. Sunoco shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected financial assurance legally binding to the EPA Region III Regional Hearing Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, with a copy to EPA, as provided in Section XVI. (Notices and Submissions) above.

71. Release of Financial Assurance. Sunoco may submit a written request to the Director, Land and Chemicals Division that EPA release Sunoco from the requirement to

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

maintain financial assurance under this Section XVII upon receipt of written notice from EPA that its corrective action obligations under RCRA and HSWA are completed. If said request is granted, the Director, Land and Chemicals Division shall notify both the Sunoco and the provider(s) of the financial assurance that Sunoco is released from all financial assurance obligations under this Settlement Agreement.

XVIII. FORCE MAJEURE

72. Settling Respondents agree to perform all requirements of this Settlement Agreement, except for those requirements set forth in Section XVII (Obligations by Sunoco), within the time limits established under this Settlement Agreement, unless the performance is delayed by a force majeure. Sunoco agrees to perform all requirements of Section XVII (Obligations by Sunoco) of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a force majeure. "Force majeure," for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of Settling Respondent and/or Sunoco, of any entity controlled by Settling Respondent and/or Sunoco, or of any contractor of Settling Respondent and/or Sunoco, that delays or prevents the performance of the requirements of this Settlement Agreement despite Settling Respondents' or Sunoco's best efforts to fulfill the obligation. The requirement that Settling Respondents and Sunoco exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring, and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Force Majeure

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

does not include financial inability to complete the requirements of this Settlement Agreement or increased costs.

73. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Settling Respondents for all requirements of this Settlement Agreement, except for those requirements set forth in Section XVII (Obligations by Sunoco), and Sunoco for the requirements of Section XVII (Obligations by Sunoco) ("Settling Respondents or Sunoco, as applicable,"), shall notify EPA orally within forty-eight (48) hours of when Settling Respondents or Sunoco, as applicable, first knew that the event might cause a delay. Within two (2) working days thereafter, Settling Respondents or Sunoco, as applicable, shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the rationale of Settling Respondents or Sunoco, as applicable, for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling Respondents or Sunoco, as applicable, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Settling Respondents or Sunoco, as applicable, from asserting any claim of force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this

Settlement Agreement that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Respondents or Sunoco, as applicable, in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Settling Respondents or Sunoco, as applicable, in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

74. If Settling Respondents or Sunoco elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), Settling Respondents or Sunoco, as applicable, shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Respondents or Sunoco, as applicable, shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Respondents or Sunoco, as applicable, complied with the requirements of this Section XVIII, Paragraphs 72 and 73 above. If Settling Respondents or Sunoco, as applicable, carry this burden, the delay at issue shall be deemed not to be a violation by Settling Respondents or Sunoco, as applicable, of the affected obligation of this Settlement Agreement.

XIX. DISPUTE RESOLUTION

75. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. EPA and Settling Respondents or Sunoco, as applicable, shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally. If EPA contends that Settling Respondents or Sunoco, as applicable, is in violation of this Settlement Agreement, EPA Region III shall notify Settling Respondents or Sunoco, as applicable, in writing, setting forth the basis for its position. Settling Respondents or Sunoco, as applicable, may dispute EPA Region III's position pursuant this Section XIX, Paragraphs 76 and 77, immediately below.

76. If Settling Respondents or Sunoco, as applicable, disputes EPA Region III's position with respect to compliance by Settling Respondents or Sunoco, as applicable, with this Settlement Agreement or object to any EPA action taken pursuant to this Settlement Agreement, Settling Respondents or Sunoco, as applicable, shall notify EPA Region III in writing of its position unless the dispute has been resolved informally. EPA Region III may reply, in writing, to the position of Settling Respondents or Sunoco, as applicable, within thirty (30) days of receipt of notice by Settling Respondents or Sunoco, as applicable. EPA Region III and Settling Respondents or Sunoco, as applicable, shall have thirty (30) days from EPA Region III's receipt of a written statement of position by Settling Respondents or Sunoco, as applicable, to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may

be extended at the sole discretion of EPA Region III. Such extension may be granted orally but must be confirmed in writing.

77. Any agreement reached by the Parties or by EPA Region III and Sunoco pursuant to this Section shall be in writing and shall, upon signature by the Parties or by the United States and Sunoco, as applicable, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties or EPA Region III and Sunoco are unable to reach an agreement within the Negotiation Period, an EPA Region III management official at the Deputy Director level or higher will review the dispute on the basis of the Parties and Sunoco's written statements of position and issue a written decision on the dispute to Settling Respondents or Sunoco, as applicable. EPA Region III's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. The obligations of Settling Respondents or Sunoco, as applicable, under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Settling Respondents or Sunoco, as applicable, shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA Region III's decision, whichever occurs.

XX. STIPULATED PENALTIES

78. Settling Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in this Section with respect to its failure to comply with the requirements of this Settlement Agreement, except for those requirements set forth in Section XVII (Obligations by Sunoco), or unless excused under Section XVIII (Force Majeure). Sunoco shall be liable to EPA

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

for stipulated penalties in the amounts set forth in this Section with respect to its failure to comply with the requirements of Section XVII (Obligations by Sunoco) of this Settlement Agreement, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Respondents or Sunoco, as applicable, shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

79. The following stipulated penalties shall accrue per violation per day for any noncompliance with any requirement of this Settlement Agreement:

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
<i>\$500.00</i>	<i>1st through 14th day</i>
<i>\$1,500.00</i>	<i>15th through 30th day</i>
<i>\$2,000.00</i>	<i>31st day and beyond</i>

80. In the event that EPA assumes performance of a portion or all of the requirements of this Settlement Agreement, Settling Respondents, or Sunoco, as applicable, shall be liable for a stipulated penalty in the amount of \$1,000 for each day EPA performs such work. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the

noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

81. Following EPA's determination that Settling Respondents or Sunoco, as applicable, has failed to comply with a requirement of this Settlement Agreement, EPA may give Settling Respondents or Sunoco, as applicable, written notification of the same and describe the noncompliance. EPA may send Settling Respondents or Sunoco, as applicable, a written notice demanding payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Respondents or Sunoco, as applicable, of such non-compliance.

82. All penalties accruing under this Section XX (Stipulated Penalties) shall be due and payable to EPA within thirty (30) days of receipt by Settling Respondents or Sunoco, as applicable, from EPA of a written demand for payment of the penalties, unless Settling Respondents or Sunoco, as applicable, invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to EPA under this Section shall be (a) paid by certified or cashier's check(s) made payable to "Treasurer, United States of America," (b) indicate that the payment is for stipulated penalties, (b) reference EPA Region III, the Site, the Docket Number of this Settlement Agreement (CERC/RCRA-03-2012-0224DC), the name and address of the party making payment and (d) be mailed to:

U.S. EPA, Region III
P. O. Box 360515
Pittsburgh, PA 15251-6515.

Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s),

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

shall be sent to the United States as provided in Section XVI (Notices and Submissions) of this Settlement Agreement, and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

83. The payment of penalties shall not alter in any way the obligation of Settling Respondents or Sunoco, as applicable, to complete the performance of the requirements under this Settlement Agreement.

84. If Settling Respondents or Sunoco, as applicable, fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as interest. Settling Respondents or Sunoco, as applicable, shall pay interest on its unpaid balance, which shall begin to accrue on the date of demand.

85. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of a violation by Settling Respondents or Sunoco, as applicable, of this Settlement Agreement.

86. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XXI. TERMINATION

87. If any Party or Sunoco believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Settlement Agreement, that Party or Sunoco may request in writing that the

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

other Party or Sunoco agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XXII. CONTRIBUTION PROTECTION

88. With regard to claims for contribution against Settling Respondents, the Parties agree that this Settlement Agreement is an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Settling Respondents are entitled to protection from contribution actions or claims as provided by CERCLA §§ 113(f)(2) and 122(h)(4), 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for matters addressed in this Settlement Agreement. The matters addressed in this Settlement Agreement are all Response Actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

89. The Settling Respondents agree that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement they will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

90. The Settling Respondents also agree that with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement it will notify in writing the United States within ten (10) days of service of the complaint on them.

XXIII. EXHIBITS

91. Exhibit 1 shall mean the description of the Property which is the subject of this Settlement Agreement.

92. Exhibit 2 shall mean the attached chart “Addresses and Office of Property Assessment Identification Numbers.”

93. Exhibit 3 shall mean the map depicting the Site.

94. Exhibit 4 shall mean the Certification of Compliance with Agreement and Covenant Not To Sue.

95. Exhibit 5 shall mean the Certification of Compliance with Agreement and Covenant Not To Sue and Consent.

XXIV. PUBLIC COMMENT

96. This Settlement Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

XXV. EFFECTIVE DATE

97. This Settlement Agreement shall become effective (“Effective Date”) on either (1) the date when PES R&M LLC acquires the Philadelphia Refinery, or (2) the date upon which EPA issues written notice to the Settling Respondents and Sunoco that EPA has fully executed the Settlement Agreement after review of and response to any public comments received, whichever is later.

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

XXVI. COUNTERPARTS


98. This Settlement Agreement may be signed in any number of counterparts (including facsimile and electronic transmission counterparts), each of which shall be an original, with the same effect as if the signatures were upon the same instrument.

THE UNDERSIGNED PARTY enters into this Settlement Agreement, Docket Number CERC/RCRA-03-2012-0224DC.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:



Shawn M. Garvin
Regional Administrator
United States Environmental Protection Agency
Region III

7/27/12

Date

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

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THE UNDERSIGNED PARTY enters into this Settlement Agreement, Docket Number
CERC/RCRA-03-2012-0224DC.

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

Ignacia S. Moreno 8/9/12

Ignacia S. Moreno

Date

Assistant Attorney General

Environment and Natural Resources Division

United States Department of Justice

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue


Execution Copy

THE UNDERSIGNED PARTY enters into this Settlement Agreement, Docket Number
CERC/RCRA-03-2012-0224DC.

IT IS SO AGREED:

PHILADELPHIA ENERGY SOLUTIONS REFINING AND MARKETING LLC

BY:

 7/27/12

Philip L. Rinaldi Date
Chief Executive Officer

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

Execution Copy

THE UNDERSIGNED PARTY enters into this Settlement Agreement, Docket Number
CERC/RCRA-03-2012-0224DC.

IT IS SO AGREED:

PHILADELPHIA ENERGY SOLUTIONS LLC

BY:



Philip L. Rinaldi
Authorized Person

7/27/12

Date

In the Matter of Philadelphia Energy Solutions LLC
and Philadelphia Energy Solutions Refining and Marketing LLC –
Settlement Agreement and Covenant Not to Sue

THE UNDERSIGNED PARTY enters into this Settlement Agreement, Docket Number
CERC/RCRA-03-2012-0224DC.

IT IS SO AGREED:

SUNOCO, INC. (R&M)

BY: Brian P. MacDonald, Chairman and CEO

Name

Date